



604

**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** TMC, Inc.  
**File:** B-230078; B-230079  
**Date:** May 24, 1988

---

### **DIGEST**

1. Where, after receipt of initial proposals and samples, an agency amends a request for proposals to change the basis upon which award will be made from a technical (80 percent)/price (20 percent)/tradeoff to award on the basis of the low technically acceptable proposal, the agency is required to provide an opportunity to submit revised or new proposals in response to the modified evaluation criteria.
2. Request for proposals must inform offerors of minimum requirements that apply to particular factors and significant subfactors.

---

### **DECISION**

TMC, Inc., protests the award of contracts to RBW & Associates under request for proposals (RFP) Nos. 1-M-APHIS-88 (RFP-1) and 2-M-APHIS-88 (RFP-2), issued by the Department of Agriculture (USDA) for the acquisition of inactive dried yeast. TMC protests that the agency materially modified the evaluation criteria for the two RFPs after the submission of initial proposals, and then made award on the basis of the initial proposals without reopening negotiations and requesting best and final offers (BAFOs).

We sustain the protests.

The solicitations, issued in July 1987, requested proposals to supply yeast for use as part of the diet of Mediterranean fruit flies (Medflies) in Guatemala (RFP-1) and Mexico (RFP-2). Under cooperative programs conducted by USDA in those countries, Medflies are raised from eggs and sterilized for subsequent release as breeding adults in the United States so as to control the insect population. Offerors were required to furnish with their proposals samples of the yeast they proposed to supply. (The agency

042281

evaluates the nutritional value of the samples by raising a separate batch of Medflies from each sample of yeast over the course of the full life cycle of the insects--approximately 45 days.) As issued, the solicitations provided that the evaluation of proposals would be based 80 percent on technical factors--various measurements of the quantity of Medflies produced by each sample--and 20 percent on price. Both RFPs further provided that the agency reserved the right to discontinue evaluation of any yeast sample that failed to meet established criteria during any stage of the fly production process.

TMC submitted four samples in response to each solicitation. On September 24, 3 weeks after the closing date for submission of proposals for Guatemala and almost 2 weeks after the closing date for Mexico, the agency amended the solicitations to provide that award would be made to the low offeror whose product fell within the technically acceptable range. In addition, the amendments changed the technical evaluation criteria to add another measurement of production--the volume of insect larvae produced per kilogram of diet. Based upon its subsequent evaluation of the yeast samples, USDA made award to RBW under both solicitations in January 1988.

In its protests, TMC contends that the changes in evaluation criteria, made after samples and price proposals had already been submitted, were sufficiently significant to warrant an opportunity to submit revised offers. We agree.

When an agency's changed needs create a material discrepancy between an RFP's statement of the agency's requirements or the ground rules under which a procurement will be conducted and the agency's actual needs, all offerors within the competitive range should be given an opportunity through appropriate discussions to revise their proposals accordingly. See Loral Terracom; Marconi Italiana, B-224908 et al., Feb. 18, 1987, 87-1 CPD ¶ 182. We believe that a change in the evaluation criteria from award primarily on the basis of technical factors (an 80/20 technical/price ratio) to award primarily on the basis of price (to the low, technically acceptable offeror) materially alters the basis upon which proposals were solicited and requires the reopening of negotiations.

We recognize that USDA argues that a request for BAFOS subsequent to the amendments would have been impracticable because its need for the yeast, purchased on an annual basis for the ongoing production of Medflies, was too urgent to allow for the 45-day technical evaluation of a new group of yeast samples. The record before our Office, however, does not support this argument. According to the agency, the

criteria--were modified pursuant to a request from on-site technical staff that certain evaluation factors be changed to reflect more accurately the needs of the program. The agency states that it received the request for changes on September 24 and issued the amendments reflecting those changes the same day. With respect to the procurement for Mexico, however, the agency reports that it did not receive the results of its technical evaluation until December 24. Likewise, in Guatemala, the final evaluation results were not received until December 14. Further, award under the solicitations was not made until January 7, 1988, 3-1/2 months after the amendments were issued. Even granting the agency's premise that the evaluation process requires at least 45 days (based on the full life cycle of the Medflies) to test the samples, USDA has failed to demonstrate how requesting new samples on September 24 when the amendments were issued would have resulted in any significant delay in making the awards or obtaining the yeast.

USDA argues, however, that the protests of the failure to reopen negotiations are academic because TMC was not in line for award. With respect to the Mexico procurement, USDA asserts that the firm would not have been eligible for award even if the original technical/price tradeoff had not been changed. The agency claims that the TMC sample receiving the highest final score (93.33)--including the maximum technical score of 80 and a price score of 13.33--would still have ranked second behind the RBW sample selected for award, which would have received the overall high final score of 95.87--including a technical score of 75.87 and the maximum price score of 20 (because it was the lower-priced, technically acceptable sample).

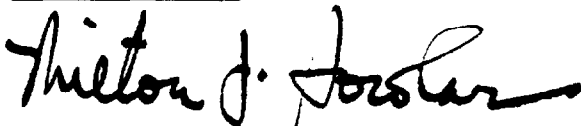
We find the agency's claim of no prejudice with respect to the Mexico procurement to be unpersuasive. Our review of the record provides no basis upon which to conclude that the competition for the solicitations as issued would not have been materially different from the competition actually obtained had offerors known of the changes made in the evaluation criteria--the increased importance of price and the addition of an evaluation criterion for larval production--to reflect more accurately the agency's minimum needs. In this regard, we note that TMC contends that a slight reduction in the technical quality of a yeast formulation can result in a significant reduction in price. The agency has confirmed that yeast formulations may vary widely in quality. Had TMC known, when submitting its original proposals, that price would be given precedence over quality, the firm argues that it could have offered a different combination of quality and price. We find the argument reasonable.

With respect to the Guatemala procurement, USDA asserts that TMC was not prejudiced by the failure to reopen negotiations because all four of the samples submitted by TMC were found to be technically unacceptable; since the firm was not in the competitive range, USDA argues that it would not have been in line for award in any event.

USDA's argument ignores the fact that one of the samples submitted by TMC was offered at a lower price and received a higher technical score than the sample upon which award was made; TMC's sample was rejected as technically unacceptable only because it failed to meet a minimum requirement not set forth in the solicitation. Although the solicitation set forth the criteria under which each sample would be evaluated, such as larval production and adult longevity, it did not state the minimum requirements which the agency established for each criterion. TMC's sample failed to meet an unstated requirement that between 86.6 and 92.3 percent of Medflies raised on the sample emerge from the pupae stage of development and fly; only 84 percent of the adult Medflies produced with TMC's sample could fly. We note that it appears from the record that only 2 of 14 samples met the unstated requirement for emergence and flight and only one sample met the unstated requirements for all of the evaluation criteria. Not even the sample selected for award for the Mexico procurement met all of the unstated minimum requirements in the Guatemala procurement. Therefore, we do not agree with USDA that TMC's samples were unacceptable based on the RFP criteria.

The protests are sustained.

Since deliveries under both contracts have been substantially completed, it is not feasible to recommend that the procurement be recompeted. 4 C.F.R. § 21.6(b) (1988). We find the protester, however, to be entitled to be reimbursed the costs of preparing its proposals and of filing and pursuing the protests, including attorney's fees. See The Aydin Corp.; et al.--Request for Reconsideration, B-224908.3 et al., May 19, 1987, 87-1 CPD ¶ 527; Southwest Marine, Inc., B-225686, May 14, 1987, 87-1 CPD ¶ 510.



Acting Comptroller General  
of the United States